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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID MICHAEL KIMBLE, TOSHIRO, OZAWA,
and NGA MARIE NGUYEN

Appeal 2008-0842
Application 09/775,692
Technology Center 2100

Decided:[1] February 27, 2009

Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

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[1] The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-30. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a system and method for displaying a video content frame within a WEB browser based content frame. (Specification 1:2-3.)

Claim 1, reproduced below, is representative of the subject matter on appeal.

> 1. A method of displaying a video content frame within a WEB browser based content frame in a windowless environment, comprising the steps of:
>
> a) generating a transparent section in the browser based content frame; and
>
> b) overlapping the video content frame in the transparent section of the browser based content frame.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Anderson	US 6,219,042 B1	Apr. 17, 2001
Gerba	US 6,445,398 B1	Sep. 3, 2002
Houghton	US 6,757,707 B1	Jun. 29, 2004

The following rejections are before us for review.

1. The Examiner rejected claims 1-22 and 24-30 under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Gerba.

2. The Examiner rejected claim 23 under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Gerba and Houghton.

ISSUE

Have Appellants shown that the Examiner erred in rejecting claims 1-22 and 24-30 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Anderson in view of Gerba on the grounds that a person with ordinary skill in the art would know to modify the browser feature of Anderson with a transparent portion as taught by Gerba and to use the transparent portion to display video content within the browser?

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. The Specification describes

> a video media event is detected and a transparent section in the browser frame is generated. A video content frame in the transparent section of the browser frame is overlapped where the video content frame is generated from the video media event generating a transparent section in the browser frame.

(Specification 3:20-25.)

2. The Specification describes the transparent section of the browser based content as

> the TV media handler 300 is a content handler in the middleware layer 256 that is responsible for controlling a region of the screen and painting that region with a transparent color to allow an underlying video frame or layer to show through the browser or HTML layer or frame based on data returned with the URL indicating video media content.

(Specification 14:21-24.)

3. Gerba discloses using a transparent layer

> As shown in FIG. 8, the PIG cell 182 may be located in a corner of the tool screen. Alternatively, the PIG screen may be overlaid on part of the tool screen. For example, the PIG cell may be positioned near the IPG lens (such as just above and to the right of the lens) so that the viewer can see the program title in the lens and watch the PIG video together, without the need to move his or her eyes substantially from lens to PIG cell and back. In that case, the graphics memory is organized into layers of graphics planes such that the IPG is displayed in the foreground while the plane with the reduced video images is in the background. The foreground IPG plane is then depicted in a transparent color to allow the moving video in the PIG to be viewed through the IPG plane.

(Gerba col. 27, ll. 6-19.)

4. Anderson discloses that in its television mode, "…the programming guide configuration, shown in FIG. 7, includes a window 120 in which television programs may be, but are not always, displayed." (Anderson, col. 5, ll. 61-64.)

5. Anderson likens the use of its television viewing program browser to that of an internet browser in that

> [t]he television home and Internet home configurations depicted in FIGS. 2 and 3 are the basic starting points for accessing television- and Internet-related services or configurations within each mode. These home pages are similar in concept to the home pages utilized on the world-wide-web, and extending this concept to the television mode brings consistency to the user interface, thereby increasing user comfort and ease of use.

(Anderson, col. 4, ll. 27-34.)

6. The Examiner found:

> As per claim 1, Anderson et al. teaches a method of displaying a video content frame within a WEB browser based content frame in a windowless environment (col. 1, lines 56-68, col. 2, lines 1-21), comprising the steps of:
>
> a) generating a section in the browser based content frame (col. 4, lines 53-68); and
>
> b) overlapping the video content frame in the section of the browser based content frame (col. 5, lines 15-24).
>
> However, Anderson fails to teach generating a transparent section.
>
> Gerba teaches generating a transparent section. (column 27, lines 5-20)
>
> It would have been obvious to an artisan at the time of the invention to include Gerba's teaching with method Anderson in order to allow moving video to be viewed when it is overlapped by the web browser.

(Answer 3.)

PRINCIPLES OF LAW

Obviousness

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.") The Court in *Graham* further noted that evidence of secondary considerations "might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." 383 U.S. at 17-18.

ANALYSIS

The rejections are affirmed as to claims 1-30.

Appellants argue claims 1-22 and 24-30 as a group. We select claim 1 as the representative claim for this group, and the remaining claims 2-22 and 24-30 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007). We also affirm the rejection of dependent claim 23 since Appellants have not challenged such with any reasonable specificity (*see In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987)).

Appellants argue that:

> Anderson et al. as admitted by the examiner, does not use a transparent portion of anything at all; Gerba et al. uses a transparent portion but not in a browser, and in fact nowhere mentions that its method can be used in a browser, much less how one might render a portion of a browser to be transparent to undertake the present claims.

(Appeal Br. 6). That argument is not well taken because the Appellants are attacking the reference individually when the rejection is based on a combination of references. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Young*, 403 F.2d 754, 757-58 (CCPA 1968). Here, the Examiner found that Anderson, and not Gerba, discloses the browser feature. Thus, Appellants' argument is misplaced. Also, Appellants' argument seeks an explanation of how a transparent section would be bodily incorporated into the browser of Anderson which is not the test for obviousness. *See Keller*, 642 F.2d at 425.

In their pre-*KSR* Brief, Appellants argue that:

> since Anderson et al. admittedly does not contemplate a transparent section of the browser and since Gerba is directed to a different problem than both Anderson et al. and the present claims, and does not suggest its transparency concept for use in a browser-based environment, there is no proper prior art suggestion to combine the references as proposed.

(Appeal Br. 7.) We disagree with Appellants. First, to the extent Appellants seek an explicit suggestion or motivation in the reference itself, this is no longer the law in view of the Supreme Court's recent holding in *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). Since the Examiner has provided some articulated reasoning with some rational underpinning for

why a person with ordinary skill in the art would modify Anderson to use Gerba's teaching of generating a transparent section to allow moving video to be viewed (FF 6), Appellants' argument is not persuasive as to error in the rejection.

Second, both Gerba and Anderson disclose juxta-positioning of text (title of the content) with an associated video content on the same screen (FF 3, 4, 5). Although not disclosed in the context of its web browser, Anderson's video content window 120 is presented within a programming guide which, like a browser, uses mostly textual information to link to a larger collection of electronic content. Further, Anderson discloses its television programming guide is configured to be similar in "concept to the home pages utilized on the world-wide-web, and extending this concept to the television mode brings consistency to the user interface, thereby increasing user comfort and ease of use." (FF 5.) Thus, we agree with the Examiner that a person with ordinary skill in the art would know to modify the browser feature of Anderson with a transparent portion as taught by Gerba and to use the transparent portion in the browser to display video content because such a feature is already present in Anderson's world wide web inspired "look and feel" programming guide. "When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or in a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability." *KSR*. at 1740.

CONCLUSIONS OF LAW

We conclude the Appellants have not shown that the Examiner erred in rejecting claims 1-22 and 24-30 under 35 U.S.C. § 103(a) as unpatentable over Anderson in view of Gerba, and claim 23 under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Gerba and Houghton.

DECISION

The decision of the Examiner to reject claims 1-30 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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